

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re ARIA R., a Person Coming Under the Juvenile Court Law.
SAN FRANCISCO HUMAN SERVICES AGENCY,  Plaintiff and Respondent,  v. EMILY J.,  Defendant and Appellant.

A159042

(San Francisco City & County  
Super. Ct. No. JD163274)

Emily J. (Mother), the mother of Aria R. (Minor), appeals from an order made at a hearing pursuant to Welfare and Institutions Code<sup>1</sup> section 366.26 terminating her parental rights and selecting adoption as the Minor's permanent plan. Mother contends the order terminating her parental rights must be reversed because the juvenile court failed to find that Minor was either generally or specifically adoptable, and because there is no legal or factual basis for inferring the necessary finding. We affirm the order terminating her parental rights.

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. Early History to Termination of Reunification Services<sup>2</sup>

Minor was detained at birth after she and Mother tested positive for methamphetamines. Mother received services, and the initial dependency case was dismissed. Within hours of the dismissal, Mother was found under the influence of alcohol and/or drugs at a public library with Minor. The San Francisco Human Services Agency (Agency) filed a new dependency petition alleging that Minor had suffered or there was a substantial risk she would suffer serious harm or illness due to Mother's inability to adequately supervise or protect her, and due to Mother's inability to provide her with regular care because of Mother's mental illness, developmental disability, or substance abuse. The juvenile court detained Minor and, ultimately, terminated Mother's reunification services and set the matter for a section 366.26 hearing.

### B. Section 366.26 Report and Two Addendums

In August 2018, prior to the hearing, the Agency filed a section 366.26 report recommending termination of Mother's parental rights and adoption as Minor's permanent plan. The report described Minor as a happy, bright, energetic child with no health or medical concerns. Minor was in preschool and performing appropriately for her age. But since her visits with Mother

---

<sup>2</sup> The early background facts underlying this case are set out more fully in our prior nonpublished decisions, *Emily J. v. Superior Court* (Jul. 31, 2019, A156906) and *In re Aria R.* (Aug. 28, 2019, A155863). We will not restate all of those facts here. Instead, we focus on summarizing what is most relevant to the issues in this appeal.

We will omit discussion of Minor's presumed father, because of his lack of contact with Minor and lack of participation in the underlying dependency proceedings.

increased, Minor began exhibiting “escalated” behavior, such as aggression towards peers, angry outbursts, tantrums, whining, and potty training regression.

Minor’s therapist reported Minor had difficulty with the back-and-forth of living with her maternal grandparents<sup>3</sup> in Sonoma County and visiting Mother in San Francisco. The report identified Minor’s grandparents as her prospective adoptive parents and her primary caregivers whom she lived with since April 2017. The report described the grandparents as having a strong attachment and physical bond with Minor, and able and willing to provide a stable and permanent home. Mother had only taken care of Minor when she was about one to two years old, and the Agency expressed major concerns about Mother’s parenting skills and other behaviors. The Agency stated that Minor displayed resistance to visiting Mother and aggression toward her, and that their relationship was not healthy or positive. The Agency further reported that the “Resource Family Approval” process for the grandparents had been completed, that the grandparents had no known criminal history, and that the results of their child welfare history were still pending, but the Agency anticipated no barriers to adoption.

In June 2019, the Agency filed its first addendum to the section 366.26 report, which included the following information. Mother arrived late to several visits with Minor, continued to display poor parental judgment, and spoke to Minor about the court case despite orders not to. Mother took numerous drug tests after her discharge from a residential mental health program in November 2018 until May 2019, and never tested positive aside from one positive test for alcohol in December 2018. Mother had an active

---

<sup>3</sup> All further references to Minor’s grandparents are to her maternal grandparents.

bench warrant due to a failure to appear in court on an arrest for theft in March 2019. The addendum described Minor as content and happy with her grandparents. Minor began individual therapy in September 2018, and her therapist did not believe any reduction of visits with Mother induced any sadness or distress in Minor. In May 2019, the Agency consulted with various people working on this case (e.g., Minor’s attorney, mental health providers) and determined that adoption was the best permanent plan.

The Agency filed a second addendum to the section 366.26 report in September 2019. The addendum provided updates about Mother and Minor and their visits and reported that Minor recently began kindergarten and exhibited “no red flags or transition issues.” The addendum also documented a “bonding study” concluding that Mother and Minor had a weak and inconsistent relationship, and that it would not be detrimental for Minor to discontinue the relationship.

### **C. The First Two Days of the Section 366.26 Hearing**

The section 366.26 hearing began on October 2, 2019. Protective services worker Amy Yim, who had been assigned to the case since November 2017 and authored the section 366.26 report and addendums, testified at length. Among other things, she testified that her recommendation of adoption and termination of parental rights was supported by the contents of the section 366.26 report and addendums, the bonding study, and conversations with Minor’s therapist. She testified that Minor is generally adoptable, and specifically adoptable by her grandparents. According to Yim, Minor was stable and thriving with her grandparents, whom Minor views as her primary care providers, and with whom she has a strong bond. Yim recommended that the grandparents adopt Minor, and believed it would be harmful to remove Minor from her grandparents and place her in another

adoptive home. Yim indicated the Agency had identified other potential adoptive homes for Minor with relatives, though none other than the grandparents' home had yet been assessed.

Yim testified that the grandparents had a child welfare history, i.e., four referrals stemming from Mother's childhood. Due to the age of the records, however, Yim knew only that the four referrals occurred during Mother's adolescence, that three of them were closed after some investigation, that one was referred out for evaluation (meaning either there was no ground for further investigation or it was assigned to a careworker to speak to the family), and that at least one referral involved Mother's sibling. She knew Mother had reported to the doctor who conducted the bonding study that her father hit her with his hands or a belt, leaving welts. Yim did not know that grandmother previously testified and acknowledged grandfather had sometimes engaged in inappropriate physical discipline with their children. A transcript of that testimony was admitted into evidence. Despite such history, Yim testified she was not concerned about Minor's placement with the grandparents because the grandparents' home had undergone the Agency's assessment process, and because of what she observed and learned from others about Minor and grandparents' relationship.

Yim testified about numerous other subjects, including information she received about Minor's mental health and Minor's visits with Mother. Yim opined the visits were regressing in quality due to Mother's lack of progress with her parenting issues. Yim discussed one visit that she felt was problematic during which a woman brought an alleged half sibling to visit Minor and Mother. Yim testified Mother introduced the child as a half sister, but the Agency did not know if that relationship could be continued. Yim

expressed concern about the Minor experiencing more trauma if the relationship could not be continued. Yim testified she tried to investigate whether this was actually Minor's half sister but was never able to get in contact with Minor's father. The juvenile court admitted the Agency's section 366.26 report and addendums into evidence, as well as the bonding study discussed in the second addendum.

Mother took the stand briefly, testifying that Minor needed her and that she wished to reunify with Minor. Mother stated her belief that Minor's behavior, including her anxiety and stress, was "due to the fact that she's just in the situation that she's in. It's not necessarily my fault other than initially." Mother also asserted she just needed "a little bit more time" to stabilize herself. Mother additionally submitted several letters regarding positive visits with Minor and their relationship.

During closing arguments, Mother's counsel argued the grandparents' prior child welfare history was relevant to determining whether adoption should be Minor's permanent plan. The court pressed to know which party carried the burden of seeking out more information about the four referrals involving the grandparents. The Agency indicated that it was the Agency's burden, that the burden was met, and that the Agency only knew that none of the four referrals resulted in Mother's removal from her parents.

The next day, the juvenile court stated for the record that the Agency had obtained more information about the four referrals. More specifically, Yim contacted Sonoma County and learned that all four referrals were closed and that none ever became a case. Further, Sonoma County had no details available about the referrals other than the last one in 2001. Mother's counsel asked for additional time to investigate since paperwork for the 2001 referral indicated it was "substantiated." The court indicated that Mother's

counsel could ask to reopen evidence at the next court date to introduce more evidence regarding the grandparents' prior child welfare history.

**D. Additional Information Regarding Grandparents' Child Welfare Referrals and Conclusion of the Section 366.26 Hearing**

On October 22, 2019, the Agency filed a third addendum to its section 366.26 report updating the information about the grandparents' prior child welfare history.<sup>4</sup> Yim again authored the addendum and reported that staff at the Family, Youth and Children's Division of the Sonoma County Human Services Department had no information to provide because records for referrals closed for more than 10 years are destroyed. Sonoma County staff told Minor's grandmother the same thing. Yim stated she spoke to the Agency's permanency program director, who confirmed the grandparents continued to be fully approved through the "Resource Family Approval" process. Specifically, the grandparents had completed their preservices training, their criminal background checks cleared, they had no match in the Child Abuse Central Index, and they passed a psychosocial assessment.

The juvenile court then held the third and last day of the section 366.26 hearing on October 24, 2019. The court discussed the Agency's October 22, 2019 addendum and wanted the grandparents' child welfare history further

---

<sup>4</sup> Prior to the third addendum, Mother had served a subpoena seeking records from "Sonoma County Social Services" regarding the grandparents' referrals. In opposing a motion to quash her subpoena, Mother submitted an e-mail dated October 2, 2019 from a protective services supervisor to Yim. That e-mail had forwarded information about one substantiated referral involving Mother's brother, who reported his father hit him in the arm, leaving a bruise, and previously kicked him, which did not leave a mark. Also attached to the opposition were printouts or screenshots concerning other referrals dating to the mid-1990's, showing basic information about the referrals.

clarified in writing. After a recess in the hearing, the Agency filed a supplement to the third addendum. In the supplement, counsel for the Agency represented that the grandparents' prior child welfare referrals dating back to 1994, 1995, 1996, and 2001 never resulted in any open court cases. Its counsel further stated: "The 1994 referral concerned an allegation of general neglect and was evaluated out and not investigated. The 1995 and 1996 referrals were allegations for physical abuse and were closed out after investigations.'" The 2001 referral involved an allegation of physical abuse that was "investigated and substantiated, but then the situation stabilized, and it was also closed out with no further action taken.'" In court, all the parties agreed that the one substantiated referral involved Mother's brother. The third addendum and supplement were admitted into evidence. Mother did not personally appear at this hearing, and through her attorney she declined to reopen evidence concerning the grandparents' prior child welfare history and instead opted to rest based on the evidence already presented.

The juvenile court issued its ruling from the bench. After noting it previously terminated reunification services, the court ordered Mother's parental rights terminated and adoption as Minor's permanent plan. The court identified the grandparents as the prospective adoptive parents and set the adoption hearing for April 2020.

The parties then had a discussion about whether the juvenile court found Minor "generally and specifically adoptable." The court indicated there was no space on the Judicial Council form to make those specific findings, but stated on the record: "[T]he finding is that she's generally adoptable. That's the input of the finding. [¶] . . . [¶] . . . Generally [adoptable] is inherent in this finding. [¶] . . . [¶] . . . I said adoption is her permanent plan. She

qualifies for adoption. There are no exceptions in which she would not, and that is inherent in these findings.” The court indicated it would not say that Minor was “specifically adoptable.” However, after Minor’s counsel asserted that Minor was specifically adoptable because the grandparents agreed to adopt Minor, the court stated: “That’s why they’re identified as the prospective adoptive parents.” On the Judicial Council form summarizing the orders at the section 366.26 hearing, the court left blank the box it could have checked to state it found “clear and convincing evidence that it is likely the child will be adopted,” though it checked boxes on the form indicating termination of Mother’s parental rights and adoption as the permanent plan. The court wrote in the form that adoption would likely be finalized by April 2020.

## DISCUSSION

Subject to a few exceptions not applicable here, section 366.26 requires the juvenile court to terminate parental rights and order a child placed for adoption if the court determines, “based on the assessment provided as ordered under subdivision (i) of Section 366.21, subdivision (b) of Section 366.22, or subdivision (b) of Section 366.25, and any other relevant evidence, by a clear and convincing standard, *that it is likely the child will be adopted.*” (§ 366.26, subd. (c)(1), italics added.) A child is considered “generally adoptable” if the evidence establishes that the child is likely to be adopted within a reasonable time, and “specifically adoptable” if there is a prospective adoptive family waiting to adopt the child, but there is no requirement that the juvenile court find the child either generally or specifically adoptable. (See *In re A.A.* (2008) 167 Cal.App.4th 1292, 1313 (A.A.); see generally *In re B.D.* (2019) 35 Cal.App.5th 803, 817 [regarding general and specific adoptability].) “All that is required is clear and

convincing evidence of the likelihood that the dependent child will be adopted within a reasonable time.” (A.A., at p. 1313.)

In this appeal, Mother first contends that the juvenile court never made a finding, based on clear and convincing evidence, that Minor was adoptable. She is incorrect. While an express finding of “general” adoptability is not required (A.A., *supra*, 167 Cal.App.4th at p. 1313), the court nonetheless made an explicit finding on the point. As indicated above, the court stated: “[T]he finding is that she’s generally adoptable. That’s the input of the finding.” Minor’s counsel then asked, “So Your Honor is making the finding that she’s generally and specifically adoptable?” To this, the court responded: “No, not specifically. [¶] . . . [¶] . . . Provide me the law that says I have the authority to say she is specifically adoptable by her grandparents. [¶] . . . [¶] . . . Generally [adoptable] is inherent in this finding. [¶] . . . [¶] . . . I said adoption is her permanent plan. She qualifies for adoption. There are no exceptions in which she would not, and that is inherent in these findings.” (See *In re Kristin W.* (1990) 222 Cal.App.3d 234, 253.)

In her reply brief, Mother claims these statements by the court did not represent an actual finding of general adoptability. In her view, the court was merely “clarifying that this was the finding that needed to be made,” yet it declined to make findings as to either general or specific adoptability. We disagree. The language used by the court clearly reflected its express finding of general—though not specific—adoptability. Because nothing in the record supports Mother’s unreasonable reading of the proceedings, she has not demonstrated error, reversible or otherwise. (*In re Sade C.* (1996) 13 Cal.4th 952, 994; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [“ ‘A judgment or order of the lower court is *presumed correct*. All intendments and

presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.’ ”].)

Mother further contends that even if the juvenile court made a general adoptability finding, the court erred in failing to state that clear and convincing evidence supported its finding. We reject this. Mother cites no authority holding that a court’s adoptability determination is necessarily defective if the court did not expressly refer to the applicable standard at the hearing. Here, the court did not articulate an incorrect standard; nor did Mother request clarification during the proceedings below. In light of the presumption that the juvenile court understood and applied the correct standard, “this issue fails for want of a record which affirmatively demonstrates error.” (See, e.g., *Armando D. v. Superior Court* (1999) 71 Cal.App.4th 1011, 1025; see also *Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)<sup>5</sup>

Pointing out differences between the prospective adoptive parent designation (§ 366.26, subd. (n)) and the requisite adoptability finding (§ 366.26, subd. (c)), Mother next argues the juvenile court incorrectly “stated that a finding of general adoptability ‘is inherent in’ its designation of the grandparents as prospective adoptive parents.” This argument misconstrues the record. Specifically, it ignores the aforementioned portion of the record where the court explicitly found Minor generally adoptable and clarified that

---

<sup>5</sup> We note the court left blank the box it could have checked on the Judicial Council form to indicate there was clear and convincing evidence that it is likely Minor would be adopted. That circumstance does not alter our conclusion on this point. As the Agency points out, the court’s oral pronouncement of adoptability controls. (*In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1241, fn. 5; cf. *In re A.C.* (2011) 197 Cal.App.4th 796, 799–800.) Mother presents no developed argument to counter this point.

its finding of general adoptability was part of its selection of adoption as the permanent plan.

Because we conclude the juvenile court made an express finding of adoptability, we reject Mother's further contention that an adoptability finding cannot be *inferred* because the adoption assessment report and subsequent reports are incomplete and unreliable. That said, were Mother attacking the sufficiency of the adoption assessment reports, we would conclude Mother forfeited the claim by not raising it below. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623 (*Brian P.*); *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.)

Mother next contends that, even had a finding of adoptability been made, there was no substantial evidence to support it. For the reasons below, we conclude otherwise.

As indicated, the juvenile court may terminate parental rights if it determines by clear and convincing evidence that it is likely the child will be adopted. (§ 366.26, subd. (c)(1).) "The issue of adoptability requires the court to focus on the child, and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt." (*Brian P.*, *supra*, 99 Cal.App.4th at p. 624.) "[A] prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family.*" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1650.) "A child who is happy, healthy and young, with no discernable developmental problems, can be found to be generally adoptable even if no prospective adoptive family is '“waiting in the wings,”' ready to adopt." (*In re B.D.*, *supra*, 35 Cal.App.5th at p. 817.)

We review the record for substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that Minor was likely to be adopted within a reasonable time. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 400.) “ ‘Clear and convincing’ evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt.” (*Brian P.*, *supra*, 99 Cal.App.4th at p. 624.)

Here, there is clear and convincing evidence showing Minor was generally adoptable. The original section 366.26 report assessed Minor as a young and physically healthy child. Her mental health providers indicated she was generally happy, bright, energetic, engaging, and social. In preschool, she performed normally for her age, and her teachers described her as cooperative, respectful, and someone who “generally gets along with everyone.” The Agency’s first addendum described Minor as kind, happy, and creative. The addendum also stated that in May 2019, after consultation with various people participating in this case, including Minor’s mental health providers, the Agency determined that adoption was the best permanent plan for Minor. The second addendum reported that Minor’s kindergarten teacher described her as happy and delightful, as having adjusted well, and as having friends, being well liked, and capable of being redirected, with “no red flags or transition issues.” At the section 366.26 hearing, Yim testified Minor was “doing excellent” and thriving. Yim also expressed confidence that Minor was generally adoptable. And the circumstance that Minor had a prospective adoptive family also showed that Minor was generally adoptable. (*In re Erik P.*, *supra*, 104 Cal.App.4th at p. 400; *In re Sarah M.*, *supra*, 22 Cal.App.4th at pp. 1649–1650.)

Mother argues Minor was not generally adoptable, citing to evidence that Minor has behavioral issues, such as aggression and tantrums. We are

not persuaded. First of all, we cannot weigh the evidence, which Mother’s argument would have us do. Second, Mother relies largely on the original section 366.26 report which was filed at the end of August 2018, and letters from mental health providers dated October 25 and November 12, 2018. Mother, however, fails to acknowledge that on November 16, 2018—after those documents were authored—the juvenile court significantly decreased Mother’s visits with Minor. Thereafter, in the first addendum filed in June 2019, the Agency reported that Minor had “minimal emotional and behavior issues at school and had no behavior deterioration specifically after visits with the mother were reduced.” That addendum also stated Minor had started individual therapy, and her therapist reported Minor was functioning moderately well, though she displayed some separation anxiety when at home because she did not want to separate from grandmother. Notably, the second addendum noted Minor’s kindergarten teacher described her as having “no red flags or transition issues.” Minor’s therapist also reported she was doing well and continued to work on coping and self-regulation skills. Likewise, Yim testified at the section 366.26 hearing that Minor’s kindergarten teacher reported that Minor did not exhibit any anxiety or separation symptoms as she had before. (See, e.g., *A.A.*, *supra*, 167 Cal.App.4th at pp. 1312–1313.) In sum, there was ample evidence that Minor’s behavioral issues had significantly improved by the time of the section 366.26 hearing.

Finally, Mother contends Yim’s testimony that Minor was generally adoptable was meaningless because Yim did not recall that Minor’s therapist had diagnosed her with “separation anxiety disorder” and behavioral symptoms reflective of an adjustment disorder, and Yim was unfamiliar with the term “adjustment disorder.” We disagree. At the section 366.26 hearing,

Yim testified that Minor's mental health providers had not directly communicated Minor's separation anxiety and adjustment disorder diagnoses to Yim, and that, as far as Yim knew, Minor just exhibited symptoms of these diagnoses. In any case, Yim's alleged shortcomings properly go to the weight of her testimony and were presumably considered by the juvenile court. Because the record reflects that Yim testified knowledgeably about Minor's behavioral issues and symptoms, we cannot agree that Mother's assessment that Yim's adoptability testimony was meaningless simply because she did not know Minor was diagnosed with "separation anxiety disorder" or know what an "adjustment disorder" was.

In closing, we conclude a reasonable trier of fact could find substantial clear and convincing evidence in the record that Minor was likely to be adopted within a reasonable time. Having so concluded, we need not and do not address Mother's contention that the evidence was insufficient to support a finding of specific adoptability. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061.)

#### **DISPOSITION**

The order of the juvenile court terminating Mother's parental rights is affirmed.

---

Fujisaki, J.

We concur:

---

Siggins, P. J.

---

Petrou, J.

A159042  
*In re Aria R.*